C.F. 71 & 72.

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Department of fR

OFFICE BP dpD

STATION

BP No. 1,40 A in 1940

Dated 6-8-32

B 5296

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(SUBJECT.)

Enforcement Act (South Kanara)

Appointment of Date for Calculation of Interest from June

* Not to be filled in in the case of permanent record.

1

B 5286
22.9.32

Ref.A2-8316-32. South Kanara Collector's Office,

Camp Kudabidri, dated 18-9-1932.

From

Khan Bahadur J. Hussain, Bar-at-law,

Collector of South Kanara.

To

The Secretary to the Board,

Land Revenue and Settlement,

Madras.

B1

Sir,

Limitation - Encroachment Appeals etc. - whether time limit to be reckoned from the date of the notice or from the date of its communication - Instructions solicited.

A doubt has arison with regard to the reckoning of time limit in the case of encroachment appeals and notices issued in the matter of refunds of revenue. According to B.S.C 172 (8) and Section 11 of the Land Encroachment Act, appeal tim in the case of encroachment appeals has to be calculated from the date of the decision or order, excluding the time taken to obtain a copy of the decision or order. In this District, eviction orders (i.e. notices under Section 6 of the Land Encroachment Act are served on the parties concerned and they prefer appeals enclosing those orders duly stamped, so that no question of excluding the time required to obtain a copy arises, as there is no need to apply for copies in that case. It is however, a point whether the interval between the date of the order and its communication to the party can be considered as time required to obtain a copy. As the eviction orders are generally served on the parties through the village officers to comply with the provision regarding the proper service of such notices, such a process naturally takes some time—even more than a month in some cases, and though the order is passed earlier, a party does not become aware of it until it is actually served on him. If time limit is reckoned from the date of the decision

P 9428 Vol IV + P 10871 Mad. Rec Vol II, 4.6

22 SEP 1932

instead of from the date of its communication, as expressly worded in the B.S.O. and the Land Encroachment Act quoted above, the result is that the delay in service is reckoned against the party. A strict interpretation to the letter of the rule would mean a considerable disadvantage to the party, resulting in most of the appeals being thrown out as time barred.

2. The same question arises in the case of notices for refunds of revenue. The Government have in G.O.No. Misc.1105 Rev., dated 27-5-1932 communicated with B.P.No. Misc.1718 dated 7-6-1932 ordered that the limit should be three months in cases where notices have been issued to the petitioner's concerned (Para 1 (a) of the G.O.). But it is not clear whether the limit of three months has to be reckoned from the date of the notice or from the date on which it is actually communicated to the party.

3. In a somewhat parallel case reported in I.L.R.34 Madras 151, the High Court held that the date of communication of the order should be considered as the date of decision for purposes of limitation, as the decision cannot be said to be passed until it is in some way pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing what it contains. That decision was in connection with the question of limitation under the Survey and Boundaries Act. Nevertheless, the principle ennunciated holds good in cases under reference in paras 1 and 2 above, as in both cases the parties have no opportunity of knowing the decision until it is actually communicated to them. As the point is not, however, free from doubt I solicit Board's instructions as to how the time limit should be reckoned - whether from the date of the decision or the date of its communication to the party.

Syed N. Nalwad
Asst. Collector

For Collector.

KSR
20.9.32

B. F. XXII-A-19—28,004—15-3-32 (5)

Subject.

FOR MEMBER.

Encroachment Act - (South Kanara) - Appeals - Limitation of time - Calculation - Instructions

READ AGAIN B. P. No. _____, dated ~~June~~ _____ 193 .

" " " _____, " _____ 193 .

READ ALSO :—

Register No. _____ From the _____, No. _____, dated _____ 193 .

pp. 1-2 of B. 5286/32

" " _____, " " _____, " _____, " _____ 193

" " _____, " " _____, " _____, " _____ 193 .

RESOLUTION. (M is) No. ~~9410~~ dated _____ 193 .

The Collector is informed that the date of the order under the Madras Act III of 1905 for purposes of limitation for appeals is the Date on which it is communicated to the party and as regards the ~~refunds of~~ refunds of revenue referred to in G.O. No. Mis 1105 Rev. dt. 22.5.32 the time limit of three months should be reckoned from the Date on which the notice is actually received by the party -

8/8. 6-10 m

To the Collector of South Kanara.

forwarded
for
6/10/32

Note file

Encroachment Act —
(South Kanara — Limitation
— Date of
— Calculation

B 528 132

To AS (HR)

(Please see the Section at p. ... Section 11 of the Madras Land Encroachment Act, III of 1905 lays down that "No appeal shall be brought after the expiration of 60 days from the date of the decision or order complained of" excluding the period taken for obtaining a copy of the decision or order appealed against, vide also S.O. 172 and Rule X in Appx. XIV Chap. XV of the A.S.O." The Collector wants information whether "the Date of the decision or order means the Date on which the order is passed or the the Date on which the party ...

order, the contention that the last interpretation is unsustainable is rejected. Section 23 of Madras Act III of 1895 and S. 54 go from which it is seen that the time limit runs from the date of decision when it is pronounced in the presence of the party and from the date of actual receipt by the party when the decision is communicated to him by post as otherwise. The judgment of the High Court reported in I.L.R. Madras 51 supports this interpretation. Section 11 of Madras Act III of 1905 may be given a similar interpretation for the purpose of reckoning time limit in Madras.

32 Under the Land Encroachment Act appeals are preferred on two occasions viz (1) when the Taluk Charges under Sec 5 of the Act assessment with or without penalty on any encroachment &

P. 762 Madras Code Vol. II 4th Ed.

P 865 Vol III

B.S.O 1576-20 clearly says that the period of limitation for purposes of appeal should be reckoned from the date of communication of the order by post.

p 1085 of Madras Code - Vol II

(12) when the RDO orders eviction under Sec 6 of the Act. In the first case the Talv on the B memo submitted by the VO issues No 7 notice asking the encroacher to show cause within a specified time why his unauthorised occupation should not be penalised & evicted. In response to the above notice the encroacher either puts in an objection petn within the time allowed or accepts the fact. In either case the Talv passes orders on the B memo after the notice time getting, of course, the remarks of the RDO & considering any objection that might have been preferred. Where orders on B memo are not communicated to the encroachers they come to know of the order of Talv only when the V. Headman demands the levy on the encroachments from them. This will be ordinarily some months after the order of the Talv though rules require the immediate communication of the B memo orders to the VOs & the collection of the levy within 30 days from the date of the order

The point for consideration here is from which date the appeal time is to be calculated : either from the date of the service of the No. 7 notice or from the date of the order of the Tahv on the B. memo or from the date when the N.H. demands the ~~d~~ levy. In cases where the encroachr has not preferred any objn in response to No. 7 notice, No. 7 notice may be taken as a fair good notice of what the Tahv wreas to do after the notice time & the time for appeal may be calculated from the date of the Tahv's order on the B memo Though the order is not actua communicated to the encroachr this would be in conformity with the principle contained in the observation of the Hon'ble Court Judge whose words in the portion marked at p. 155 of the book put up.

Difficulty arises only where the encroacher foregoes objections in response to NOT notice. As NO notice is given a call for ~~adjudication~~ adjudication & if one is offered, the encroacher is entitled to know the order passed on his objections. But the orders passed on such B memos also when objns are received, are not generally communicated to the encroacher with the result the he comes to know of them only when the VH demands the rent. In these cases the time for appeal will in fairness have to be calculated from the date of demand. But if instructions are issued to the Talk to communicate at least the order passed in these cases to the encroacher the time for appeal may be calculated from the date of communication of the orders.

As regards the appeal preferred against an order of eviction which is the only aspect the Collector deals with in his letter at the time for appeal may, as suggested by him, be calculated

pp 1 & 2 4

from the date of service of No 6 notice as no order of eviction is communicated to the encroacher & No 6 notice alone is issued for service on ~~them~~ him.

As the subject requires the issue of general instructions it may be desirable that before passing orders, select Collectors are consulted regarding the practice obtaining in their districts, whether orders or B memos are communicated to the encroachers ~~as~~ whether there are appeals or not & if not, whether it is feasible to do so in future & from what date the time for appeal against the orders under Secs 5 & 6 of the Act is to be calculated.

I agree.

28/9/32

A-H/2.10.32

As regards the question raised by the Collr in para 2, he may be informed that the time limit should be reckoned from the date on which the notice is actually served by the party and not by the date of the order.

28.9.32

The Collectors generally are to be informed that

28/9/32

Clear See Section 10 of the Act III of 1905. An appeal shall lie to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar in regard to the notice under S. 5 and the imposition of a penalty the aggrieved party may file an appeal as soon as the penal assessment is collected from him after showing a copy of the Tahsildar or Dy. Tahsildar order. In this case the limitation runs from the date on which the penal assessment is demanded from him by the Tahsildar after imposing the penal assessment and not communicated to him. In cases of eviction the party may file an appeal as soon as the notice under S. 6 is served on him or the order of eviction is passed & communicated or the order, as the case may be, as soon as the order of eviction is served and the remains it. No reference to select Collectors is necessary.

28/9/32

proof

30/9/32

A-H/2.10.32.

7

In the case of appeals on orders of conviction under Sub Sec III of 1905 appeal time runs from the date of the order or from the date of its communication to the party. It may be informed that the date of the order for purpose of limitation for appeals is the date on which it is communicated to the party.

Asst 21.10.32

This is an unnecessary reference and the office has put up an unnecessarily long note.

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Let Reg: Supdt. will do so

to go round A.S. first in such a

To DS (AR)

Draft submitted

A

5.10.32

5.10.32

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